

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Federal-State Joint Board)
on Universal Service)

CC Docket No. 96-45

COMMENTS OF SBC COMMUNICATIONS, INC.

SBC Communications Inc. submits its initial Comments pursuant to Order DA 00-1068, rel. May 12, 2000 (the Order). As explained below, line count data at the wire center level constitute confidential commercial information under Exemption 4 of the Freedom of Information Act. Moreover, there is no compelling public interest requiring disclosure of such data.

I. Line Count Data at the Wire Center Level is Confidential Commercial Information.

As the Order notes, commercial information submitted on a mandatory basis is "confidential" under exemption 4 of FOIA when disclosure is likely "to cause substantial harm to the competitive position of the person from whom the information was obtained."¹ There is no question that line count data at the wire center level meets this standard. Line count information is generally available today only on a state wide basis. SBC maintains wire center line count data on a confidential basis and such data would not normally be disclosed outside the SBC companies.² With wire center line count data

¹ Order, p. 3; n. 10. Exemption 4 of FOIA shields information which is (1) commercial or financial in nature; (2) obtained from a person outside government; and (3) privileged or confidential. *Washington Post Co. v. U.S. Department of Health and Human Services*, 690 F.2d 252 (D.C. Cir. 1982).

² SBC is aware that in the past information of this nature was voluntarily released by Southwestern Bell Telephone Company in Arkansas. With the advent of increased

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competitors would of course know the number of access lines in any given ILEC wire center and thus both the level of the ILEC's business and the amount of available business in that small area. Additionally, availability of wire center line counts for each quarter, over time, allows competitors to track growth. Competitors could then easily target the most heavily populated and/or fastest growing wire centers and avoid the least populated wire centers or those not experiencing growth. ILECs, of course, must serve all of these areas. Competitors, already advantaged by market entry flexibility ILECs do not enjoy, could leverage that advantage by using the ILEC's own commercial information. ILECs are further prejudiced because CLECs are not required to even submit wire center line count data unless they seek universal service support, let alone make it publicly available. There can therefore be no reciprocity between ILECs and CLECs in availability of this data if the ILECs' information is not protected. Wire center line count information is plainly confidential commercial information under FOIA and should be protected.

Wire center line count information is also confidential under Exemption 4 of FOIA for the additional, and alternative, reason that disclosure may impair the Commission's ability to obtain necessary reliable information in the future. *Critical Mass Energy Project v. Nuclear Regulatory Commission*. 975 F.2d 871, 878 (D.C. Cir. 1992) (en banc), *cert denied*, 507 U.S. 984 (1993); *National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). The Commission, and the courts, have recognized that even where the government can compel production the government's interest in ensuring the continued reliability of the information may justify protection

competition, however, disclosure of wire center line count data has obviously become more harmful to the ILEC and any past disclosures should be discounted in considering

from public disclosure. *Order*, p. 3, n. 10; *Critical Mass Energy Project v. Nuclear Regulatory Commission*, *supra*. For instance, the Commission held that disclosure of data gathered by the Commission under its audit authority would likely impair the government's future ability to obtain such data, notwithstanding the statutory authority to compel production. *In the Matter of Martha H. Platt on Request for Inspection of Records*, FOIA Control Nos. 90-63 (October 3 1990).

II. There is no compelling public interest in disclosing wire center line count data.

Disclosure of wire center line count data where the ILEC is not seeking universal service funding would confer a significant advantage on competitors without substantial public benefit. The reasons offered by the Commission to support the limited denial of confidential treatment for line count data in wire centers where universal service funding is received³ are clearly not applicable here. A competitor does not need this information to evaluate entry into high-cost areas where it would have to rely on universal service support. Nor is the information necessary to enable states to comply with the certification requirement in section 54.313 of the Commission's rules. Furthermore, there is no indication that wire center line count information in wire centers with no universal service support can be "reverse-engineered" from data that should be publicly available in furtherance of universal service requirements. It is difficult to conceive of any interest in unprotected disclosure of this information that would outweigh the competitive harm

whether the information is currently entitled to protection.

³ The Commission denied requests for confidential treatment of such data only to the extent the number of lines in wire centers receiving high cost universal service support may be determined upon release of statewide carrier-by-carrier support amounts and the per line support amounts available in a wire center. *Order*, FCC 00-125 (rel. April 7, 2000). SBC does not agree with this decision but maintains that wire center line count data should not be publicly disclosed whether or not the wire center receives support.

to the disclosing ILEC. There is therefore no compelling public interest in disclosure of this commercially sensitive information and no persuasive showing can be made justifying its release under the stringent standard established by applicable law and the Commission's rules. (See citations to statutes, cases and rules in *Order*, p. 3, n. 12). If found to be useful in a future Commission proceeding the information can be provided under the standard protective order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Regina Ragucci, do hereby certify that a copy of SBC's Comments has been served via first class mail-postage prepaid on the parties attached on June 26, 2000.


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